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ATTORNEY GENERAL

June 18, 1975

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ARIZONA ATTORNEY GENERAL

Mr. Gordon Wheeler
Chief of Police
Williams Police Department
113 South First Street
Williams, Arizona 86046

Dear Chief Wheeler:

You have asked for my opinion whether off-duty policemen qualify for workmen's compensation insurance coverage and if off-duty policemen have the power to make arrests.

Pursuant to A.R.S. § 41-191 and 41-192, I am prohibited from rendering legal advice to persons other than County Attorneys, legislators and state agencies. Therefore, the following should not be considered by you as an official opinion of this office but merely my best effort to extend you the courtesy of an answer.

An off-duty police officer is covered by insurance to the extent that the activity he is engaged in is part of his duty as a law enforcement officer and reasonably contemplated in his employment. His power to make arrests is largely controlled by the authority granted to him by the city.

A police officer, like any other employee within the coverage of the Arizona Workmen's Compensation Act, A.R.S. §§ 23-901, et seq., is entitled to recover for injury or death "by accident arising out of and in the course of his employment" A.R.S. § 23-1021.

An accident "arises out of" the employment if there is a causal relation between the employment and the injury. Royall v. Industrial Commission, 106 Ariz. 346, 476 P.2d 156 (1970). The requirement that the accident be "in the course of his employment" refers to the time, place and circumstances under which the accident occurred. Sears, Roebuck & Company v. Industrial Commission, 69 Ariz. 320, 213 P.2d 672 (1950). An employee injured while engaged in performance of some duty for his employer which is reasonably

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contemplated as part of the employment will be covered by the Act irrespective of the cause of the accident. The basic test is the relation between the injury and the conditions under which the work was performed.

The activities of an off-duty police officer are not all within the scope of his employment. An off-duty policeman is only covered by the Workmen's Compensation Act when he is performing duties which can fairly be described as within his employment. In Coffee v. Industrial Commission, 91 Ariz. 290, 371 P.2d 1018 (1962), a deputy sheriff was injured participating in the Cochise County Sheriff's Posse rodeo. Since the activities of the Sheriff's Posse were not within the scope of the petitioner's employment by the county as a deputy sheriff, coverage was denied. Similarly, in Buick v. Industrial Commission, 82 Ariz. 128, 309 P.2d 257 (1957), an off-duty officer of the Phoenix Police Department was found not to be within the coverage of the Act when a police firearm he was carrying fell out of its holster and discharged, injuring him while he was at a picnic. See also Wyckoff v. Industrial Commission, 14 Ariz. App. 288, 482 P.2d 897 (1971).

If the officer is engaged in an activity connected with his employment or an attendant duty, any injuries incurred would be covered by insurance pursuant to the Act. See, e.g., Stroud v. Industrial Commission, 2 Utah 2d 270, 272 P.2d 187 (1954), (off-duty officer injured while checking out, in his capacity as sergeant, a special police car to two officers).

For purposes of coverage by the Act, the scope of employment can be enlarged at the instance of the employer. Prigden v. Industrial Commission, 70 Ariz. 149, 217 P.2d 592 (1950), even where the directed activity is recreational or social in nature. U.S. Fidelity & Guaranty Co. v. Industrial Commission, 43 Ariz. 305, 30 P.2d 846 (1934). The fact that the activity occurs away from the employee's normal place of employment does not bar recovery. Edwards v. Industrial Commission, 94 Ariz. 342, 385 P.2d 219 (1963).

Similar considerations control the authority of police officers to make arrests during their off-duty hours. There seems to be no limits to the power to arrest which the city can grant to its police officers if it so chooses. A.R.S. § 13-1403 grants the power to make warrantless arrests to peace officers. A very limited power to make arrests is

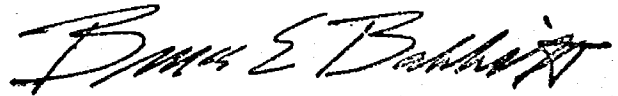
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granted to private persons in A.R.S. § 13-1404. There is no limitation on the power of a city to grant peace officer status to its police officers. A city could, if it wished, grant to its officers round-the-clock authority to make lawful arrests. Otherwise, such officers would have to be regarded as private persons and limited in their power to make arrests by the provisions of A.R.S. § 13-1404.

Since this office does not represent the Industrial Commission I felt that you should have the benefit of their thinking on the questions posed. Enclosed is a copy of their thoughts regarding the questions.

Please excuse the delay in responding, but I just received the information from the Industrial Commission on June 10, 1975.

Best regards,



BRUCE E. BABBITT
Attorney General

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Enclosure